

EXHIBIT 64

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AMERICAN ARBITRATION ASSOCIATION

NEW YORK, NEW YORK - COMMERCIAL RULES

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MOSHAEL J. STRAUS,

Claimant,

v.

Arbitration No.

13 148 Y 01800 10

J. EZRA MERKIN,

Respondent.

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June 21, 2011

Cravath, Swaine & Moore LLP

Worldwide Plaza

825 Eighth Avenue

New York, New York

10:05 a.m.

B E F O R E:

WILLIAM A. DREIER, P.J.A.D. (ret.) - The Chairman

THOMAS J. FLEMING, ESQ. - Panel Member

RORY O. MILLSON, ESQ. - Panel Member

Amy Klein Campion - Hearing Reporter

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<p style="text-align: right;">234</p> <p>1 Merkin - Direct/Bamberger 2 A. I can think of several reasons. 3 Q. The market opens hours earlier. 4 Just before the market in the U.S. opens, 5 people bicker about price, they agree on a 6 price, that's the price that gets 7 confirmed, and that has nothing to do with 8 what happens hours later in Chicago, 9 correct? 10 A. No. I guess -- if that's what 11 you meant, I would say not only could I 12 think of several reasons why it should, I 13 would, broadly speaking, disagree with 14 you. 15 I think there's every reason to 16 think it has something to do with what's 17 happening in the American markets. 18 Q. Correct to say that the CUSIP 19 number on the confirms that your 20 organization received for the options 21 transactions was always the CBOE CUSIP for 22 the OEX 100; true? 23 A. The CUSIP number for the listed 24 options we received? 25 Q. Well, good question.</p>	<p style="text-align: right;">236</p> <p>1 Merkin - Direct/Bamberger 2 market." 3 Do you see that? 4 A. Yes. 5 Q. From May 2001. This was, I 6 guess -- what? Six months or less before 7 9/11? 8 A. I didn't catch you -- I got the 9 quote. After that I didn't hear what you 10 said. I'm sorry. 11 Q. What I said: After May of 2001 12 we experienced just that, a protracted 13 bear market in the U.S.? 14 A. No. 15 Q. We didn't? 16 A. I don't think this is what this 17 gets at. What this gets at would be -- 18 either side of the word "or" in that 19 paragraph is no volatility. 20 He needs volatility to get his 21 program to work. He needs volatility to 22 catch the turn. So a flat dull market has 23 no volatility, and a protracted bear 24 market, which is straight down, won't help 25 much. You need to be able to catch turns</p>
<p style="text-align: right;">235</p> <p>1 Merkin - Direct/Bamberger 2 You only received one confirm 3 for a transaction, correct? For an 4 options transaction? 5 A. I don't know about all the time. 6 Q. Well, your records speak for 7 themselves. 8 But there was never any division 9 within a given trade between a CBOE trade 10 and an over-the-counter trade; you know 11 that, right? 12 A. If you're asking me what the 13 confirmations looked like? 14 Q. Yes. 15 A. I would not have seen the 16 confirmations. I would have looked at our 17 system. 18 Q. On page 17 of the article -- 19 well, page 17 of MARHedge, 4925 -- on the 20 bottom, the right-hand side -- 21 A. Yes, sir. 22 Q. -- it says: "'The worst market 23 to operate in using the strategy,' he 24 adds -- that would be Madoff -- "'would be 25 a protracted bear market or a flat dull</p>	<p style="text-align: right;">237</p> <p>1 Merkin - Direct/Bamberger 2 within a bear market. 3 Q. Because not only was the 4 strategy participating in arbitrage, it 5 was always going to revert to the mean. 6 If the market went down a little bit on 7 Monday, it was sure to go up on Friday, 8 right? Because markets always revert to 9 the mean? 10 A. I have no idea what you're 11 asking me. 12 Q. All right. 13 A. You have to define -- 14 Q. I'll withdraw it if I'm not 15 clear. 16 Both these articles speak of 17 Madoff's business being up to \$6 or \$7 18 billion during this period. 19 Do you see that? 20 A. Yes. 21 Q. I will represent that both 22 articles use that figure -- 23 A. No. 24 Q. Was that consistent with your 25 understanding of the size of the accounts</p>

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<p style="text-align: right;">238</p> <p>1 Merkin - Direct/Bamberger 2 managed -- 3 A. When? This is 2000 -- 4 Q. It's May of 2001, sir. 5 A. I can't quite work it out. 6 We were, at the end, something 7 like 3½ or 4 percent of its capital. And 8 I want to see if that works with what we 9 were then. I just can't remember. 10 When I say "at the end," at the 11 end of the end, when the bomb went off in 12 December of '08, given what we were, and 13 given what was reported under management 14 we were about 4 percent of that figure. 15 Q. Correct to say that when you 16 read this, that he did not deny that he 17 was managing 6 to \$7 billion, that was not 18 a surprise to you, that it had grown that 19 large? 20 A. I don't remember that being a 21 surprise. 22 Q. That he would be among the three 23 largest hedge funds in the world, had he 24 been a hedge fund; that would not be a 25 surprise to you?</p>	<p style="text-align: right;">240</p> <p>1 Merkin - Direct/Bamberger 2 both by Roman, who you referred to 3 earlier, and by a Paul Olin, who signed as 4 head of structural risk of UBP Alternative 5 Investments. 6 Do you see that? 7 A. I don't, but I'm sure it's here. 8 Q. Now, there did come a time when 9 UBP called upon you to arrange a meeting 10 at the lipstick building with Bernie 11 Madoff, correct? 12 A. That's not quite the way it came 13 about. Such a meeting did come about. I 14 offered it to them. 15 Q. And they took you up on it? 16 A. Yes. 17 Q. Did Mr. Olin, the risk manager, 18 did he actually attend that meeting? 19 A. I believe so. There were four, 20 five people there from UBP. I'm not sure 21 exactly who was whom. 22 Mr. Igolnikov was there. 23 Q. This is about two months before 24 Mr. Madoff is arrested, correct? 25 A. Yeah -- it's in the fourth</p>
<p style="text-align: right;">239</p> <p>1 Merkin - Direct/Bamberger 2 A. I'm not so sure that would make 3 him one of the three largest at that time. 4 Q. Can you turn to 63, please. 5 (The witness complies.) 6 MR. BAMBERGER: I apologize, 61 7 and 62 is in evidence, Mr. Levander. 8 MR. LEVANDER: I've objected to 9 neither. 10 MR. BAMBERGER: So 61 and 62 are 11 in evidence. 12 (Claimant's Exhibit 62, received 13 in evidence.) 14 BY MR. BAMBERGER: 15 Q. Now, sir, what I tried to do in 16 63 is try to put in a single place all the 17 handwritten notes that I can find that 18 were in your diligence file. 19 And if you remember, in the 20 prior go-around with the arbitration your 21 counsel had pointed out one that I had 22 missed, and I'll represent to you that 23 I've included it in here this time. 24 I've also included in here a 25 letter that seems to have been co-signed</p>	<p style="text-align: right;">241</p> <p>1 Merkin - Direct/Bamberger 2 quarter. 3 Q. Now, is it correct to say that 4 Mr. Madoff shared with you from time to 5 time that he was facing massive 6 redemptions, especially in the second half 7 of calendar year 2008? 8 A. No. 9 Q. Did the subject ever arise 10 between you and him? 11 A. "The subject" being...? 12 Q. The level of redemptions that he 13 was seeing. 14 A. Once, that I can remember. 15 Q. When? 16 A. He and I began to have a 17 conversation in the fourth quarter of '08, 18 when I began to give him a sense of what 19 our year-end redemptions might be. 20 Q. Right. 21 A. And I asked him, you know, how 22 are you handling redemptions. 23 Meaning, are they under control. 24 Q. Right. 25 A. And he said yes.</p>

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<p style="text-align: right;">394</p> <p>1 Merkin - Direct/Bamberger 2 to Moshael Straus? 3 A. I don't know. I don't know the 4 answer to the question. I believe we sent 5 it to everybody. I'm sure Moshael was on 6 the list. I'm sure we sent it to him. 7 Q. You're sure of all that? 8 A. I'm sure he got it. 9 Q. Where's the list? 10 A. As I sit here right now? I have 11 no idea where it is. It's not in my 12 pocket. I have no idea where it is. 13 Q. Why would you produce the 14 Gabriel offering memorandum of 2006 in 15 connection with Modan and not produce 16 Ascot, if you had it? 17 A. Are you telling me he doesn't 18 have it? 19 Q. Yes. 20 A. That's news to me. Or news to 21 me today. 22 Q. Why would you send an offering 23 memorandum to an investor that's not 24 making a fresh investment in Ascot? 25 A. Who is --</p>	<p style="text-align: right;">396</p> <p>1 Merkin - Direct/Bamberger 2 Q. You send offering memo -- 3 A. Why would that confuse an 4 investor? 5 THE CHAIRMAN: Mr. Bamberger, 6 you're arguing with the witness. 7 MR. BAMBERGER: You've been more 8 than kind with me. 9 THE CHAIRMAN: You had one more 10 question to ask about 15 minutes ago. 11 We will adjourn now until 12 10 o'clock tomorrow. 13 [Time noted: 5:19 p.m.] 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p style="text-align: right;">395</p> <p>1 Merkin - Direct/Bamberger 2 Q. Not indicating a desire to make 3 a new investment in Ascot. 4 A. I'm missing something pretty 5 basic. We're in '06? 6 Q. Yes. 7 A. In '06 we're telling every 8 single investor, I think, that we are 9 changing the lockup, and then we're 10 telling them we're not. 11 Q. Right. That's in the 12 partnership agreement. You don't need to 13 send the offering memorandum to do that, 14 correct? 15 A. I don't know. 16 Q. An explanatory letter that sends 17 along the new LPA would tell them why 18 you're sending them the new LPA. 19 There would be no reason to 20 confuse an investor by sending him an 21 offering memorandum that he neither 22 wanted, nor sought, nor needs; true? 23 A. No. I think we would have sent 24 them an offering memorandum if that had 25 been the advice of our counsel.</p>	<p style="text-align: center;">REDACTED</p>

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